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FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission
Office of the Secretary

Washington, DC 20554

**ORIGINAL
FILE**

In the Matter of)
)
Amendment of Section 73.202(b)) RM-_____
Table of Allocations)
FM Broadcast Stations) MM Docket No. - _____

London and Hyden, Kentucky)
)
To: The Chief, Mass Media Bureau

JOINT PETITION FOR RULEMAKING AND RELATED ORDERS

Come Now Ethel Huff ("Huff"), permittee of FM radio station WYGE, Channel 223A, London, Kentucky, and Joey Dick ("Dick") licensee of FM radio station WZQQ, Channel 222A, Hyden, Kentucky, and by their undersigned counsel and pursuant to Section 1.401(a) of the Commissions Rules, petition the Commission to institute a rule-making proceeding the amend section 73.202(b) of said Rules in the following respects:

<u>Community</u>	<u>Existing</u>	<u>Proposed</u>
London, KY	<u>223A</u> , 280A	<u>222C3*</u> , 280A
Hyden, KY	<u>222A</u>	<u>223A</u>

*with site restriction

No changes are involved for any channels other than those presently authorized for Petitioners' stations; and, as demonstrated in the Technical Report attached hereto as Exhibit A and incorporated herein by reference, the proposed changes will comply with all requirements of the Commission's Rules.

As also noted in the Technical Report, the spacing parameters involved in the WYGE upgrade are such that third party expressions of interest will not be permitted.

Petitioners also request that the Commission issue show cause orders to WYGE and WZQQ, modifying their authorizations to Channel 222C3 (with site restriction) and Channel 223A with 6 kw ERP, respectively.

The above changes are clearly in the public interest. The upgrade of WYGE from a Class A to a Class C facility will provide London, Kentucky with its first area-wide service and permit WYGE to serve an additional 80,000 persons, an increase of 177%. The change in the WZQQ facility from 3 kw to 6 kw (which would not be possible if WYGE did not move to the site specified for its C3 operation) will further the Commission's policies for improving the service of Class A stations.

The Petitioners have entered into the agreement attached as Exhibit B hereto under which each will bear his own costs associated with the change of his facilities.

WHEREFORE Petitioners pray that Section 73.202(b) of the Commission's Rules be amended and Show Cause Orders be issued as requested above.

Respectfully submitted

September 11, 1991

William P. Bernton
2 Mill Lane
Yarmouth Port, MA 02675
(508) 362-4358

Attorney for Petitioners

TECHNICAL REPORT

ETHEL HUFF

Requests:

ADJACENT CHANNEL UPGRADE OF AUTHORIZED WYGE AT
LONDON, KY TO CHANNEL 222C3

SEPTEMBER 2, 1991

TECHNICAL REPORT

This technical report has been prepared on behalf of Ethel Huff, permittee of a new FM station on channel 223A at London, Kentucky, in support of a petition for rulemaking requesting an upgrade from 223A to 222C3.

I. PROPOSED UPGRADE AND SUBSTITUTION

The upgrade of the London 223A facility to 222C3 is possible with substitution of 223A for 222A at Hyden, Kentucky and a site restriction. Station WZQQ presently operates there on 222A at 3 kw. The petitioner has entered into an agreement with the WZQQ licensee whereby that station consents to the change in channel to 223A and a simultaneous move of its transmitter site to a preferred site northeast of Hyden. These changes will permit WZQQ to obtain full 6 kw class A operation thus realizing an increase in coverage.

II. WYGE 222C3 ADJACENT CHANNEL UPGRADE

Upgrade of the WYGE facility is proposed at reference point:

N 37-09-31 W 84-15-03 (15.1 km west).

An allocation study is submitted as Exhibit E-1 which demonstrates that the 222C3 facility meets all required clearances at the reference point with the exception of the licensed WZQQ operation. With the site restriction

proposed herein and agreed upon with the licensee, the upgraded 222C3 WYGE facility will be separated from the proposed WZQQ 223A facility by 89.7 km (88.5 km are required). Exhibit E-3 demonstrates that the 222C3 allocation operating as a maximum facility (25 kw/ 100 meters HAAT) will more than provide a 70 dBu contour over London, KY.

The upgrade of WYGE to 222C3 qualifies as an adjacent channel upgrade because it is entirely mutually exclusive with the existing authorized facility. The 89 km spacing required between class C3 and a Class A adjacent channel allocations can not be obtained. Therefore, the new higher class channel will not be subject to competing expressions of interest.

III. WZQQ 223A SUBSTITUTION AND SITE RESTRICTION

The substitution and site restriction of 223A for WZQQ's 222A operation is proposed at reference point:

N 37-13-41 W 83-14-40 (13.16 km northeast -- 57.8 degrees).

This site is preferred by the licensee of WZQQ; is available; and, provides an existing tower. Therefore, no FAA approval will be required. An allocation study is included as Exhibit E-2 demonstrating clearances for the 223A substitution. Furthermore, Exhibit E-4 demonstrates that the modified facility will more than provide a 70 dBu contour to the city of Hyden. It is noted that a uniform 16.2 km 70 dBu would

provide the required service. Exhibit E-4A employs the actual terrain at the preferred site showing that WZQQ will develop a 70 dBu of 18.7 km toward Hyden. WZQQ's realization of full 6 kw class A operation on 223A at the restricted site is an additional public interest benefit of this proposal.

IV. AREA AND POPULATION GAINS

An analysis of the area and population which would be served by the 222C3 upgrade has been conducted by superimposing the maximum facility (25 kw/ 100 meters HAAT) C3 60 dBu contour (39.1 km radius) on the 1980 U.S. Census Map of Counties, County Subdivisions, and Places. Uniform distribution of population was assumed. Where the contour bisected a subdivision, proportional population was determined. The upgraded population was compared to the area and population from the original application for the authorized WYGE facility.

A total population of 124,862 was determined within the proposed C3 60 dBu (1980 U.S. Census) and a service area of 4,803 square kilometers based on numerical integration. The proposed upgrade will serve an sq km in area (+164%).

III. CONCLUSION

The upgrade of WYGE to 222C3 will provide London, Kentucky with its first wide area FM service, and effect an

increase in population served of 79,824 (+177%).

Furthermore, the proposed modification of Hyden station WZQQ will substantially increase its service area as a result of the capability of employing full class A 6 kw/ 100 meters facility.

It is concluded that the upgrade of the authorized facility on 223A at London, KY to 222C3 can be accomplished with a substitution and site restriction for station WZQQ at Hyden, KY to which the licensee has agreed.

Clearly the requested upgrade is mutually exclusive with the existing authorized facility spaced at a distance of 9.51 km as compared to the required 89 km for adjacent channel class A to C3 facilities. Further, the spacing cannot be significantly increased without loss of city-grade coverage to London. Therefore, the 222C3 upgrade meets the Commission's requirements for cochannel and adjacent channel upgrades.

SUMMARY OF ALLOCATION PROPOSALS

City	Present	Proposed	Coordinates
London, Ky	223A, 280A	22C3, 280A	N 37-09-31 W 84-15-03 (15.1 km @ 283 Deg)
Hyden, KY	222A	223A	N 37-13-41 W 83-14-40 (13.16 km @ 57.8 Deg)

**EXHIBIT E-1
LONDON ALLOCATION STUDY**

CHARLES ANDERSON - BROADCAST CONSULTANT
1519 EUCLID AVE. BOWLING GREEN KY 42101

WYGE
LONDON, KY

REFERENCE		DISPLAY DATES
37 09 31 N	CLASS C3	DATA 06-25-91
84 15 03 W	Current rules spacings	SEARCH 09-01-91
CHANNEL 222 - 92.3 MHz		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WYGE.C	223A	London	KY	99.5	9.51	89.0	-79.49 *
WZQQ	222A	Hyden	KY	89.0	77.34	142.0	-64.66 *
WDEFFM	222C	Chattanooga	TN	203.3	244.42	237.0	7.42
WXJJ.C	275A	Mount Vernon	KY	320.0	29.02	12.0	17.02
WVLKFM	225C1	Lexington	KY	352.2	98.68	76.0	22.68
WWXLFM	276A	Manchester	KY	90.7	42.25	12.0	30.25
WWXLFM	276A	Manchester	KY	90.8	42.37	12.0	30.37
WMIKFM	224A	Middlesboro	KY	147.0	74.29	42.0	32.29
AD221	221A	Owingsville	KY	20.1	121.66	89.0	32.66
WUOT	220C	Knoxville	TN	167.7	130.98	96.0	34.98
ALOPEN	224A	Russell Springs	KY	259.5	79.62	42.0	37.62
WSAC.C	222A	Louisa	KY	51.8	182.37	142.0	40.37
AP224	224A	Russell Springs	KY	258.4	82.92	42.0	40.92
AP224	224A	Russell Springs	KY	258.9	86.36	42.0	44.36
WMORFM	221A	Morehead	KY	31.9	133.77	89.0	44.77
DE221	221A	Morehead	KY	31.9	133.77	89.0	44.77
DE221	221A	Morehead	KY	32.4	134.20	89.0	45.20
WTKYFM	221A	Tompkinsville	KY	249.3	136.25	89.0	47.25
WTKYFM	221A	Tompkinsville	KY	249.3	136.25	89.0	47.25

EXHIBIT E-2
HYDEN ALLOCATION STUDY

CHARLES ANDERSON - BROADCAST CONSULTANT
1519 EUCLID AVE. BOWLING GREEN KY 42101

WZZQ
HYDEN, KY

REFERENCE		DISPLAY DATES
37 13 41 N	CLASS A	DATA 06-25-91
83 14 40 W	Current rules spacings	SEARCH 09-01-91
<hr/>		
	CHANNEL 223 - 92.5 MHz	
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CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
<hr/>							
WZQQ	222A	Hyden	KY	242.1	13.64	72.0	-58.36 *
WYGE.C	223A	London	KY	263.4	80.53	115.0	-34.47 *
AD226	226C2	Pikeville	KY	66.7	66.92	55.0	11.92
WESCFM	223C	Greenville	SC	166.1	238.88	226.0	12.88
WMIKFM	224A	Middlesboro	KY	215.1	85.59	72.0	13.59
DE221	221A	Pikeville	KY	66.7	66.92	31.0	35.92
WDHR	221A	Pikeville	KY	66.7	66.92	31.0	35.92
WWXLFM	276A	Manchester	KY	260.0	47.73	10.0	37.73
WWXLFM	276A	Manchester	KY	260.1	47.85	10.0	37.85
WZACFM	223A	Danville	WV	53.2	158.61	115.0	43.61
WSAC.C	222A	Louisa	KY	27.3	118.43	72.0	46.43
WDICFM	226A	Clinchco	VA	91.3	78.50	31.0	47.50
AD221	221A	Clinchco	VA	91.3	78.50	31.0	47.50
DE226	226A	Clinchco	VA	91.3	78.50	31.0	47.50
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LONDON 70 dBu SHOWING

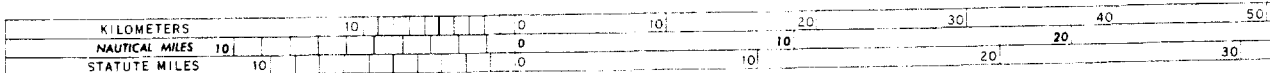
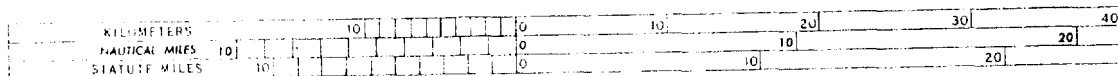
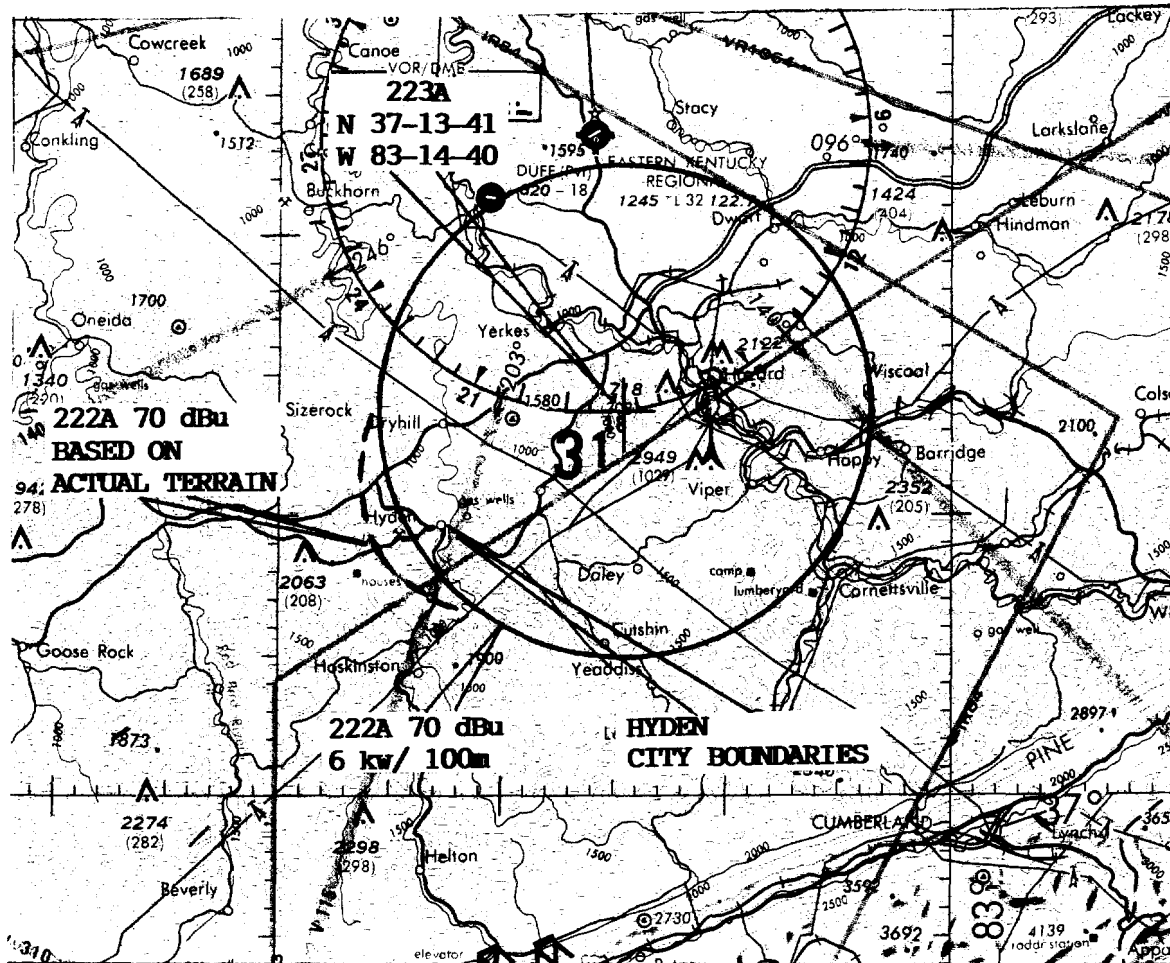


EXHIBIT E-4
HYDEN (WZQQ) 70 dBu SHOWING



**EXHIBIT E-5
HYDEN HAAT AND CONTOURS
AT SPECIFIED SITE**

**TERRAIN AND CONTOURS
FROM WZQQ PREFERRED SITE**

Service contours based on FCC F(50,50) curves

Title: HYDEN, KY Latitude: 37-13-41
Channel: 223 C/R 480.4 meters (1576.1 feet) A.M.S.L. Longitude: 83-14-40

Bearing (degrees)	HAAT (meters) (feet)	ERP (kiloWatts) (dBk)	70 dBu (3.16 mV/m) contour	60 dBu (1 mV/m) contour	54 dBu (.50 mV/m) contour
.0	125.6 412.1	6.000 7.782	18.3 km 11.4 mi	31.3 km 19.5 mi	42.4 km 26.3 mi
45.0	145.3 476.7	6.000 7.782	19.7 km 12.3 mi	33.6 km 20.8 mi	45.0 km 27.9 mi
90.0	85.6 280.8	6.000 7.782	14.8 km 9.2 mi	26.3 km 16.3 mi	36.1 km 22.5 mi
135.0	46.0 150.9	6.000 7.782	11.0 km 6.9 mi	19.7 km 12.2 mi	27.1 km 16.9 mi
180.0	53.4 175.2	6.000 7.782	11.9 km 7.4 mi	21.3 km 13.2 mi	29.1 km 18.1 mi
225.0	96.5 316.6	6.000 7.782	15.8 km 9.8 mi	27.8 km 17.3 mi	38.1 km 23.7 mi
* 237.8	131.0 429.8	6.000 7.782	18.7 km 11.6 mi	31.9 km 19.8 mi	43.1 km 26.8 mi
270.0	102.6 336.6	6.000 7.782	16.4 km 10.2 mi	28.6 km 17.8 mi	39.1 km 24.3 mi
315.0	145.2 476.4	6.000 7.782	19.7 km 12.2 mi	33.5 km 20.8 mi	45.0 km 27.9 mi
HAAT:	100.0 328.2				

Note: Radial(s) denoted by "*" not included in HAAT calculation.

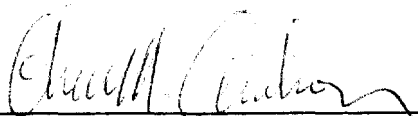
CERTIFICATION

Charles M. Anderson hereby certifies that;

His qualifications in broadcast allocation matters are a matter of record before the Federal Communications Commission having been presented and accepted on many occasions in the past;

That he holds a lifetime General Radiotelephone license(#PG-6-7352) , a bachelors degree in the physical sciences from Western Kentucky University and advanced degrees in the communications field from the University of North Carolina and Indiana University;

That the accompanying technical report and exhibits were developed by him personally or under his immediate supervision and that all the information presented therein is true and correct to the best of his knowledge and belief.

/s/ 
Charles M. Anderson

September 1, 1991

Disclaimer: Charles M. Anderson assumes no liability for any errors or omissions in the information, exhibits and report provided herein; and, shall not be liable for any injuries or damages (including consequential) which might result from use of said information, exhibits and report.

Filing of this report with the Federal Communications Commission constitutes acceptance in full of the terms and conditions stated above.

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EXHIBIT B

Agreement

This Agreement, made and entered into as of this 23rd day of August, 1991, by and between Ethel Huff ("Huff") and Joey Dick ("Dick"),

WITNESSETH THAT:

WHEREAS, Huff holds a construction permit issued by the Federal Communications Commission ("FCC") for a new FM broadcast station ("WYOE") to operate on Channel 223A at London, Ky., and

WHEREAS, Dick is the licensee of FM Radio Station operating at Hyden, Ky. ("WYOE") on Channel 222A; and

WHEREAS, in connection with a necessary change of site for WYOE, Huff would also like to change the frequency of WYOE to Channel 222C3; and

WHEREAS, that change would require WYOE to change frequency to 223A, but it would be possible for WYOE to operate at 223A EIR on that frequency,

NOW THEREFORE, it is agreed as follows:

1. Huff and Dick hereby agree to join in a Petition for Rule-making to be filed with the FCC which will request amendments to the FM Table of Assignments by substituting Channel 223A for Channel 222A at Hyden, Ky. and Channel 222C3 for Channel 223A at London, Ky. and requesting further that the FCC issue a "Show Cause Order" or other direction under which the authorization for WYOE would be changed to specify Channel 222C3.

2. The parties will jointly prosecute such Petition, filing such additional pleadings and taking such other actions as their engineering and legal counsel advise are appropriate.

3. The parties will engage Charles M. Anderson as their engineering counsel and William F. Burton as their legal counsel and will each pay one-half of the fees and expenses of preparing and prosecuting the above-described Petition until FCC action with respect thereto shall become "final" (i.e. no longer subject to appeal, reconsideration or review). The parties shall not be obligated hereunder to pursue the matter beyond final action of the FCC.

4. If the FCC should grant the above-described Petition or take action sustaining such party's frequency reasonably equivalent to one requested, the parties will, when such action becomes "final" as above-described, promptly take action to implement the Commission's order. Each party shall bear his own application costs, construction costs and all other costs involved in such implementation; the only costs to be shared are those of preparing and prosecuting the above-described petition.

5. The parties will co-operate in filing the construction of their respective facilities, so that WYOE will have no, or only a minimum of, down time. Each party warrants to the other that he has, or will be able to acquire, a transmission site acceptable for the operation of his station as contemplated hereby.

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6. If the Commission should dismiss the above-described petition or otherwise fail to grant the parties the relief requested or comparable relief, each party shall, nevertheless, remain liable for one-half of the preparation and prosecution costs as above provided; and neither party shall be entitled to reimbursement by the other for any part of his share.

7. This agreement shall be binding on and enure to the benefit of the parties hereto, their heirs, administrators, successors and assigns. Each party agrees that if his station should be sold it will be a condition of such sale that the purchaser assume the obligations of this agreement.

8. This Agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky.

Witness our hands and seals

Ethel Huff

Ethel Huff

LS

John Dick

John Dick

LS